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**NOTICE OF VIOLATION OU#4 RI/RISK
ASSESSMENT
U.S. DOE - FERNALD
OH6 890 008 976**

12-07-90

**USEPA/DOE-ORO
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LETTER**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

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DEC 07 1990

REPLY TO ATTENTION OF:

Mr. William D. Adams
Acting Assistant Manager
Environmental Restoration and
Waste Management
U.S. Department of Energy
200 Administration Drive
Oak Ridge, Tennessee
37831-8501

5H-12

Re: Notice of Violation
OU#4 RI/Risk Assessment
U.S. DOE Fernald
OH6 890 008 976

Dear Mr. Adams:

On August 27, 1990, the United States Department of Energy (U.S. DOE) submitted a primary draft Remedial Investigation and Risk Assessment report (the initial RI report) for Operable Unit #4 (Silos 1, 2, 3, and 4). The United States Environmental Protection Agency (U.S. EPA) disapproved this report on September 27, 1990. Accordingly, pursuant to Section XII of the 1990 Consent Agreement, U. S. DOE was required to submit a draft final primary RI report (the revised draft RI report) by October 27, 1990. On October 26, 1990, U.S. DOE requested a 20-day extension of time and submitted the revised draft RI report to U.S. EPA on November 7, 1990.

In accordance with Section XII.B of the Consent Agreement, U.S. EPA has reviewed the revised RI report. Based upon this review, U.S. EPA has determined that the report was not developed in accordance with the requirements of the Consent Agreement, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and applicable U.S. EPA guidance and policy, as required by Section X.C of the 1990 Consent Agreement. Thus, for the reasons set forth below, U.S. EPA hereby finds that U.S. DOE is in violation of 1990 Consent Agreement.

Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), provides the general framework for studies and investigations. Pursuant to this provision, the President has authority to conduct investigations, monitoring, surveys, testing, and other information gathering as deemed necessary to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved and the extent of danger to the public health or welfare or to the environment.

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Section 300.430 of the NCP, 40 C.F.R. § 300.430, describes in detail the investigatory obligations provided for by Section 104(b) of CERCLA. "The purpose of the remedial investigation (RI) is to collect data necessary to adequately characterize the site for the purpose of developing and evaluating effective remedial alternatives" (40 C.F.R. § 300.430(d)(1)). To meet this objective the NCP requires that the parties "conduct field investigations, including treatability studies, and conduct a baseline risk assessment". More specifically, Section 300.430(d)(2) provides a detailed list of the types of data gathering and investigation appropriate for the RI (40 C.F.R. § 300.430(d)(2)). The NCP makes clear that the information gathered as a result of the RI activities is essential to assess the risks to human health and the environment and to support the development, evaluation, and selection of appropriate response alternatives (40 C.F.R. § 300.430(d)(3)-(4)). This approach is confirmed by U.S. EPA guidance, Conducting Remedial Investigations and Feasibility Studies Under CERCLA (OSWER Directive 9355.3-01).

Contrary to the express language of the NCP, the revised RI report submitted by U.S. DOE lacks the data required to characterize the site or the current and potential risks to human health and the environment. There is not sufficient information to perform a detailed screening of alternatives and to support remedy selection.

U.S. EPA raised the issue of inadequate data in its September 27, 1990 disapproval letter (Attachment 1). In that letter, U.S. EPA stated that based upon the initial RI report, U.S. DOE had failed to collect the field data necessary to support an adequate RI and Risk Assessment report. Although U.S. DOE was required to submit a revised report responding to such comments, the revised RI report submitted by U.S. DOE on November 7, 1990, failed to adequately address this essential omission. To date, U.S. DOE has only completed structural integrity analysis and a portion of the internal tank sampling and the decant tank sampling, thus the associated analytical results are not yet available. Additionally, the following tasks remain to be completed or performed:

- internal residue sampling and analysis for characterization of the materials in the tanks;
- borm sampling and slant borings for characterization of soils, to determine if the tanks are leaking or have leaked;
- adequate characterization of shallow groundwater in the silo area;
- analysis for characterization of contents of the decant tank for characterization; and
- adequate monitoring of emissions and direct radiation.

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Without the data collection described above, the revised RI report cannot serve its intended purpose as provided under the NCP. In the transmittal letter for the revised RI report, U.S. DOE acknowledged that the revised RI report fails to include the necessary data (Attachment 2). At U.S. EPA's request, U.S. DOE suggested the following alternatives for dealing with this problem:

- request an extension for sampling completion and characterization of waste and surrounding environment;
- continue with current schedule and incorporate data upon availability; or
- revise the operable unit scheme and divide OU#4 into two operable units.

However, rather than selecting an alternative which complies with the NCP, U.S. DOE chose to proceed with the current schedule and submit primary documents without the RI data. This "option" is inconsistent with the express terms of the 1990 Consent Agreement and threatens the integrity of the RI/FS process as described in the Agreement, CERCLA, the NCP, and applicable U.S. EPA guidance.

U.S. DOE's failure to submit an RI report which complies with the NCP constitutes a violation of the express terms of Section X.C of the Consent Agreement. Given the severity and extent of the violation and the effect of the violation on the implementation of the remedial action, U.S. EPA finds it is appropriate to apply the stipulated penalties provision in Section XVII of the Consent Agreement. Pursuant to Section XVII, U.S. DOE may be assessed stipulated penalties at a rate not to exceed \$5,000 for the first week (or part thereof) and \$10,000 for each additional week (or part thereof). Stipulated penalties begin to accrue upon receipt of this letter and will continue to accrue until U.S. DOE completes the RI field activities and associated analytical work and submits to U.S. EPA an RI and Risk Assessment report that complies with CERCLA, the NCP, and the 1990 Consent Agreement.

This letter constitutes written notification of violation as required by Section XVII of the Consent Agreement. As provided by the Agreement, U.S. DOE has fifteen days from receipt of this notice to invoke dispute resolution. If you have any questions regarding this matter, please contact Ms. Mary Butler at the Office of Regional Counsel at (312/PTS) 353-9514.

Sincerely yours,



David A. Ullrich, Director
Waste Management Division

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Attachments

cc: Richard Shank, OEPA - CO
Graham Mitchell, OEPA - SWDO
Joe LaGrone, U.S. DOE - ORO
Leo Duffy, U.S. DOE - HDQ

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